

Telecommunications Roadmap Monthly Update

November 2004

For Internal Distribution Only

Note: The Telecommunications Division issues monthly news updates and quarterly comprehensive Roadmaps. The September 2004 Telecommunications Roadmap is the most recent comprehensive Roadmap. The next quarterly Roadmap will be issued January 2005.

Updates:

"True-up" proposals for SBC's new UNE rates.

PD issued to suspend Performance Incentives Plan "doubling feature."

Telecommunications Consumer Bill of Rights court challenge.

FCC Triennial Review Order proceeding proposed "hot cut" decision withdrawn.

CLC processing change for PU Code Sections 851 through 854.

"True-up" proposals for SBC's new UNE rates.

This proceeding, known as the "UNE Reexamination," was initiated to reexamine certain prices that SBC charges competitors who purchase "unbundled network elements" (UNEs). By purchasing UNEs, competitors are able to use portions of SBC's network to offer competitive local exchange services. The primary UNE is the copper twisted wire pair or "loop" that provides the "last mile" connection to a customer's premise. When a CLEC purchases a UNE loop plus SBC's switching services, it is termed a "UNE platform" or UNE-P.

- Whereas the interim rates for the UNE loop and the UNE-P were \$9.82 and \$13.93, respectively, the following UNE loop and UNE-P rates were adopted at the September 23, 2004 Commission meeting: \$11.93 and \$16.53, respectively. New rates for other UNEs are listed in the appendixes to that decision.
- On October 18, the ALJ issued a ruling to resolve how the parties will pay "true-up" amounts. The "true-up" amounts are the difference between the interim rates already paid and the new rates, and parties must now compensate each other as if the new rates had been in effect during the interim period. SBC filed its calculations of the amounts owed between the parties on October 22, 2004.
- On November 1, 2004 SBC filed (1) its proposal to Payment of true-up amounts, including any payment options it is offering, (2) criteria the Commission should use to determine if carriers will be competitively harmed or undergo a financial hardship, (3) how to resolve disputes over true-up calculations, and (4) whether the true-up calculations should incorporate any adjustment to the shared and common cost markup and how that would be calculated.
- November 19, 2004: Carriers and other interested parties may respond to SBC-CA's proposal, and offer their own proposals.
- December 8, 2004: Parties may file rebuttal comments. Submittal of this phase.
- February 1, 2005: Target date for Commission draft decision.

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PD issued to suspend Performance Incentives Plan “doubling feature.”

The FCC requires evidence of a program that will monitor and regulate Operations Support Systems (OSS) performance before incumbents are allowed to enter the long-distance market. The Commission established the SBC performance incentives plan (PIP) in D.02-03-023 to prevent OSS discrimination by SBC once it received Section 271 approval.

- When adopted, the PIP for SBC was intended to be an “interim” plan and only suited for getting SBC into the California long distance market without undue delay.
- Major issues were put off until a 6-month review of SBC’s experience, which informally began in December 2002. However, the review is currently on hold pending staff resource availability.
- On March 9, 2004, SBC petitioned the Commission to modify the performance incentives plan decision, D.02-09-050, by suspending a feature which doubled the credits that SBC must pay for each measure that failed at least eight out of nine consecutive months.
- SBC’s PIP is currently requiring SBC to credit about \$1 million per month.
- On October 20, 2004, the ALJ issued a proposed decision granting SBC’s petition. Comments are due November 9th, and replies are due November 14th. The Commission may consider the petition in its December 2nd meeting.

Telecommunications Consumer Bill of Rights court challenges.

In May 2004 the Commission adopted Interim Decision (D.) 04-05-057 and General Order 168 to protect consumers’ rights in California’s competitive telecommunications marketplace. The General Order affords small businesses and residential customers seven basic telecommunications services rights and provides rules enforcing those rights. Carriers are required to comply with D.04-05-057 and G.O. 168 by December 6, 2004, with the exception that they have until July 31, 2005 to comply with specific computer and billing systems rules. Recent activity regarding the telecommunications consumer bill of rights is as follows:

- On October 7, 2004, the Commission issued Decision D.04-10-013, which modified D.04-05-057 and denied applications for rehearing. The applications for rehearing were denied except for a few areas: a) Rule 8(b) was modified to clarify that carriers are not prohibited from collecting increases in certain mandated government charges from subscribers, and b) two wording modifications to eliminate inconsistencies between the final version of D.04-05-057 and the final version of G.O. 168.

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- Several carriers have filed requests for Rule 48(b) extension of time implement D.04-05-057. The requests are being individually evaluated based on five criteria detailed in that decision.
- Wireless carriers have levied two separate complaints in U.S. District Court challenging certain aspects of the interim decision and general order. Nextel of California, Inc. levied the first complaint. The second complaint was levied by a group of wireless carriers including AT&T Wireless, Cingular Wireless LLC, Verizon Wireless LLC, Sprint, T-Mobile and other carriers. The complaints are still pending.

FCC Triennial Review Order proceeding proposed "hot cut" decision withdrawn.

Following the D.C. Circuit Court of Appeals Opinion in *USTA II*, on June 18, 2004, an Assigned Commissioner Ruling suspended the Nine-Month Phase of its TRO Proceeding in R.95-04043. *USTA II* vacated the TRO rules to a large extent and explicitly denied the FCC's delegation to state commissions the role of determining if competitors are impaired without access to UNEs. Proceeding submission was set aside and the suspension will stay in place until such time as the FCC issues TRO rules in compliance with *USTA II*.

- On June 24, 2004, an Assigned Commissioner Ruling authorized the continuation of the batch hot process and pricing track of the TRO proceeding. The D.C. Circuit Court in *USTA II* did not vacate the FCC's rules regarding hot cut processes. Such processes would be necessary to migrate competitive carriers away from UNEs when and if findings were made that those carriers were not competitively impaired without access to UNEs. Currently, the ALJ is preparing a proposed decision on batch hot cut processes and pricing.
- On June 30, 2004, the Commission appealed to the Supreme Court of the United States for a review of *USTA II* regarding the *vacatur* of certain of the FCC's TRO rules.
- On July 21, 2004 the FCC released an Order and Notice of Proposed Rulemaking (NPRM) in response to the D.C. District Court Opinion in *USTA II*. Through this NPRM, the FCC seeks comments on alternative unbundling rules in an effort to comply with the *USTA II* remand requiring the FCC to decide how the impairment standard will be applied to UNEs. The FCC order requires ILECs to continue to offer UNEs at rate terms and conditions available prior to June 15, 2004 for an interim period of six months.
- On October 12, 2004, the U.S. Supreme Court denied petitions asking it to review *USTA II*.
- On October 27, 2004, an Assigned Commissioner Ruling was issued on the batch hot cut (BHC) portion of the TRO. The Ruling set aside submission of the TRO record and withdrew the Proposed Decision on BHC, which the Commission had issued on

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July 28, 2004. The record of the proceeding is now re-opened to receive comment on certain BHC processes authorized for Verizon by the New York Public Service Commission. Comments are due on November 22, 2004 and reply comments are due on December 13, 2004.

NDIEC and CLC processing change for PU Code Sections 851 through 854.

Decision 04-10-038 issued October 28, 2004 authorizes Nondominant Interexchange Carriers (NDIECs) and Competitive Local Exchange Carriers (CLECs) to file advice letters for prospective authority to transfer control of assets pursuant to public Utilities Code Sections 851 through 854. The advice letter shall become effective 40 days after filing absent commission action to suspend the advice letter. The advice letter procedure shall not be used under the conditions identified below. If carriers meet these conditions, they must file an application for authority to transfer control or assets pursuant to section 851 through 854. The advice letter procedure shall not be used:

- Where an entity acquiring assets or control is not either an already certificated entity or the parent or subsidiary of a presently certified entity. In other words, the advice letter procedure described above may not be used for purposes of market entry.
- Where the transaction involves a CLEC owned or affiliated with a California incumbent local exchange carrier.
- Where transactions are subject to the requirements of Public Utilities Code Sections 854(b) and (c).
- Where the transaction has a potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. (CEQA guideline 15378).